

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 98-2921

Winston Morrison,

Appellant,

v.

United States of America,

Appellee.

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Appeal from the United States
District Court for the
Eastern District of Missouri.

[UNPUBLISHED]

Submitted: February 18, 1999

Filed: February 24, 1999

Before RICHARD S. ARNOLD, WOLLMAN, and BEAM, Circuit Judges.

PER CURIAM.

Winston Morrison, a citizen of Freeport, Grand Bahamas, appeals the district court's¹ denial of his 28 U.S.C. § 2255 motion, in which he claimed his counsel was ineffective at resentencing for failing to raise his deportable-alien status as a basis for downward departure. Upon de novo review, see United States v. Duke, 50 F.3d 571, 576 (8th Cir.), cert. denied, 516 U.S. 885 (1995), we conclude denial was warranted. Among other things, Morrison cannot show he suffered prejudice by his counsel's alleged deficient performance, because the district court indicated it would not have

¹The Honorable Jean C. Hamilton, United States District Judge for the Eastern District of Missouri.

granted Morrison a downward departure on the basis of his alien status. See Auman v. United States, 67 F.3d 157, 162 (8th Cir. 1995) (counsel's failure to object at sentencing to use of prior conviction as predicate offense was not ineffective assistance because no credible evidence pointed to conclusion that district court would have changed its ruling based on objection from counsel).

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.